

DEC 17 2021

Matthew P. Cook  
CLERKUNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

SHANE D. WALIEZER,

Plaintiff,

vs.

JEFF LARSON, in his individual and  
official capacity,

Defendant.

1:21-CV-01021-CBK

ORDER

Plaintiff filed a *pro se* complaint under 42 U.S.C. § 1983 alleging that defendant provided plaintiff ineffective assistance of counsel during plaintiff's then-pending state court habeas proceeding. I denied plaintiff's application to proceed *in forma pauperis* without the prepayment of the filing fee, finding that plaintiff was subject to the three strikes provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g) ("order denying IFP status").

Plaintiff filed a motion to vacate the order denying IFP status. He thereafter filed a notice of interlocutory appeal as to the order denying IFP status and a motion to proceed on appeal *in forma pauperis* without the prepayment of the appellate filing fee. I vacated the order denying IFP status in the district court and denied the motion to appeal without the prepaying of the appellate filing fee, which appeal had thus become moot. Prior to the transmittal of the interlocutory appeal to the Eighth Circuit, I conducted an initial review of the complaint as required by 28 U.S.C. § 1915A(b). I determined that plaintiff's complaint failed to state a claim upon which relief can be granted and dismissed the complaint.

The United States Court of Appeals for the Eighth Circuit has remanded the appeal for the limited purpose of calculation and collection of appellate filing fees. As set forth above, the interlocutory appeal has become moot and the motion to appeal without the prepayment of the filing fee is moot. I now further find that the motion to


proceed on interlocutory appeal without the prepayment of the filing fee must be denied because plaintiff is subject to the three-strike bar under 28 U.S.C. § 1915(g). Coleman v. Tollefson, 575 U.S. 532, 534, 135 S. Ct. 1759, 1761, 191 L. Ed. 2d 803 (2015).

Now, therefore,

IT IS ORDERED that the motion, Doc. 20, to proceed on appeal *in forma pauperis* without the prepayment of the appellate filing fee is denied. This does not preclude plaintiff from seeking permission from the Court of Appeals to proceed *in forma pauperis* pursuant to Fed. R. Civ. P. 24(a)(5).

DATED this 17<sup>th</sup> day of December, 2021.

BY THE COURT:

A handwritten signature in blue ink, reading "Charles B. Kornmann", with a horizontal line underneath.

CHARLES B. KORNMANN  
United States District Judge